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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,322	12/20/2001	David William Koenig	KCC 4788 (K.C. No. 15,397	6145

321 7590 08/05/2004

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER	
COLE, ELIZABETH M	

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/029,322	KOENIG ET AL.
	Examiner	Art Unit
	Elizabeth M. Cole	1771

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 February 2004* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,9-17,20-23,26-28,31-35 and 38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6, 9-17, 20-23, 26-28, 31-35, 38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☒ Interview Summary (PTO-413) Paper No(s). 0203 .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-7, 9-11, 14-17, 20-23, 26-28, 31-35, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mandell et al in view of Romano, WO 97/31092. Mandell discloses an absorbent product comprising an osmoregulation protector such as a betaine. See page 16, lines12- page 17, line 33. The osmoregulation protector may be incorporated into a shell material such as a superabsorbent particle. See page 28. The betaine acts to prevent the formation of ammonia formation. See page 3, lines 6-9.

4. Mandell differs from the claimed invention because Mandell does not disclose the claimed amounts of osmoregulation protector employed in terms of milligrams per grams of product. However, Mandell teaches employing an effective amount. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected the amount to employ through the process of routine experimentation. Mandell also differs from the claimed invention because Mandell does not specifically disclose glycine betaine. Romano teaches employing glycine betaine in an amount which is effective to interact with bacteria in a wet wipe. See page 7, line 13 – page 8, line 28.

5. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mandell in view of Romano, as applied to claims above, and further in view of Lorenzi et al, U.S. Patent No. 6,217,889. Lorenzi teaches that liposomes maybe incorporated into personal absorbent articles and cleansing wipes along with betaines in order to enhance the skin soothing properties of the absorbent articles and cleansing wipes. See col. 15, lines 1-21 and col. 2412-15. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have further incorporated liposomes into the material of Mandell as taught by Lorenzi, motivated by the expectation that this would further enhance the skin soothing properties of the articles.

6. Applicant's arguments filed 2/16/04 have been fully considered but they are not persuasive.

7. Applicant's discussion of the Mandell reference and the requirements for a showing of obviousness as set forth in MPEP 2143 at pages 3 through the first full paragraph of paragraph 4 have been considered.

Applicant argues that Romano et al requires that the sum of R1, R2 and R3 in the formula set forth at page 8 of Romano et al be 14-24 carbon atoms and that therefore Romano cannot teach glycine betaine because in glycine betaine the sum of the carbon atoms R1, R2 and R3 equals 3. Applicant argues that this position is supported because every specific betaine compound disclosed by Romano et al meets the requirement of having R1 + R2 + R3 equal 14-24. However, Romano teaches at page 8, line 18 that C10 alkyl dimethyl betaine is an example of a useful betaine. The sum of R1 + R2 + R3 for this compound is 12 which is outside the range of 14-24, but Romano teaches that it is a suitable betaine. Therefore, it is the examiner's position that Romano does not require the sum of R1 + R2 + R3 to be within 14 –24, since exemplified

compounds in Romano are outside the range. Further, looking at the preferred ranges of Romano, in situations where R1 is 8-11 which is a preferred range for R1 and R2 and R3 are 1 which is the preferred value for R2 and R3, the sum would also be outside of the range of 14-24. Applicant argues that construing the "wherein" clause of Romano as a requirement rather than a preferred embodiment is consistent with the only specific betaine compounds listed by Romano et al. However, as set forth above, C10 alkyl dimethyl betaine is listed as a suitable betaine compound and it would not meet the sum of R1 + R2 + R3 =14-24 requirement. Therefore, the examiner disagrees that the "wherein" clause must be interpreted as a requirement, but instead maintains that the "wherein" clause of Romano is a preferred embodiment, not a requirement.

Applicant argues that when the disclosure is read as a whole as is required by MPEP 2141.02, the "wherein" clause would have to be interepreted as a requirement. The examiner agrees that the reference as a whole must be carefully considered. However, as set forth above, since some of the preferred embodiments of Romano fall outside of the requirements of 14-24 carbon atoms and an exemplified compound also falls outside the requirements of 14-24 carbon atoms, the disclosure as a whole has been considered and the position of the examiner is that the "wherein" clause denotes a preferred embodiment and not a requirement.

Applicant argues that even if Romano did not mandate that the sum of R1 + R2 + R3 =14-24, Romano does not disclose glycine betaine because it discloses many options and the preferred examples clearly teach away from glycine betaine. However, Romano discloses that betaines are useful as surfactants. The particularly claimed betaine has each of R1, R2 and R3 being an alkyl group comprising one carbon atom, i.e., a methyl group. Therefore, a person

skilled in the art would have immediately recognized glycine betaine from the disclosure in Romano.

With regard to the combination of Mandell and Romano with Lorenzi, Applicant argues that Lorenzi does not disclose the claimed betaine compounds. However, Lorenzi was not relied upon for teaching the claimed betaine compounds, but for the teaching regarding the benefits of incorporating liposomes into personal care articles.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (703) 872-9306.

Elizabeth M. Cole
Primary Examiner
Art Unit 1771

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